

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
TWENTY-SIXTH REGION**

In the Matter of

**RESEARCH FOUNDATION OF THE CITY UNIVERSITY OF NEW YORK
Employer¹**

and

**CASE 26-RC-8187
(formerly 2-RC-21706)**

**UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS UNION OF AMERICA, AFL-CIO, LOCAL 2110
Petitioner²**

and

**THE PROFESSIONAL STAFF CONGRESS OF THE CITY UNIVERSITY OF
NEW YORK
Intervenor³**

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.⁴

Upon the entire record in this proceeding⁵, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is not engaged in commerce within the meaning of the Act and it will not effectuate the purposes of the Act to assert jurisdiction herein.⁶

3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.⁷

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6)(7) of the Act, for the following reasons:

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a Request for Review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, DC 20570-0001. This request must be received by the Board in Washington by **September 15, 2000**. **.DATED** at

Memphis, Tennessee this 1st day of September 2000.

/S/

Ronald K. Hooks, Director, Region 26
National Labor Relations Board
1407 Union Avenue, Suite 800
Memphis, TN 38104-3627

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner appears as amended at the hearing.

³ The Intervenor was allowed to intervene in this matter based upon the separate contractual relationships it has representing employees of the Employer and the City University of New York (CUNY).

⁴ On June 20, 2000, the General Counsel of the Board issued an Order Transferring Case wherein he ordered that Case 2-RC-21706 is transferred to Region 26 of the Board as Case 26-RC-8187 for issuance of a Decision by the undersigned. Pursuant to said Order, the case will automatically transfer back to Region 2 as Case 2-RC-21706 upon issuance of this Decision except that Region 26 will retain jurisdiction with respect to issues relating to the substance of this Decision.

⁵ The Employer, the Petitioner, and the Intervenor have filed briefs, which have been duly considered.

⁶ The Research Foundation of the City University of New York (RF or Employer) is a not for profit educational corporation chartered in 1963 by the Board of Regents of the State University of New York for and on behalf of the Education Department of the State of New York pursuant to New York State Educational Law Section 216. According to its charter the purposes of RF are:

- a. To assist in developing and increasing the facilities of the City University of New York to provide more extensive educational opportunities and service to its constituent colleges, students, faculties, staffs and alumni, and to the general public, by making and encouraging gifts, grants, contributions and donations of real and personal property to or for the benefit of The City University of New York;
- b. To receive, hold and administer gifts or grants, and to act without profit as trustee of educational or charitable trusts of benefits to and in keeping with the educational purposes and objects of The City University of New York; and
- c. To finance the conduct of studies and research in any and all fields of intellectual inquiry of benefit to and in keeping with the educational purposes and objects of The City University of New York and/or its constituent colleges, and to enter into contractual relationships appropriate to the purposes of the Corporation.

Under the Absolute Charter the Commissioner of Education is designated as the representative of the corporation to receive service of process.

By Resolution of the Board of Higher Education of the City of New York (the predecessor to the Board of Trustees of CUNY) dated October 27, 1969, it was resolved the RF be assigned responsibility effective July 1, 1970 for

administering all grants and contracts awarded to any unit of the University and be mandated to develop procedures which will ensure that its operations are fully responsible to the needs of the college.

CUNY and RF are parties to an October 20, 1983, Agreement (The 1983 Agreement) designating the RF as fiscal agent for administering all grants and contracts ("sponsored programs") awarded to any unit of CUNY. Sponsored programs as described in the Agreement "shall be deemed to be those for which funds are made available for a specific purpose or objective, for which the sponsor usually requires periodic fiscal and programmatic reports, imposes time limitations for the use of such funds and ordinarily provides for the reversion of unused funds to the sponsor." RF is responsible only for post-award fiscal administration of sponsored programs. CUNY faculty and staff usually prepare applications for grants and contracts. Dr. Alvin Halpern, President of RF, as well as being the Dean of Research at CUNY and a tenured professor of physics at CUNY's Brooklyn College, testified faculty and staff are assisted with the application process by CUNY grants offices located at the individual CUNY campuses. Pre-grant administrative functions are handled by the campus grant offices. RF does not have the authority to generate work or projects of its own without the approval of CUNY.

Responsibility for managing operations of the RF is vested in its Board of Directors (the "Board"), the membership of which is determined, according to the Absolute Charter, by the Research Foundation's Bylaws. The Research Foundation's Bylaws were established by the Research Foundation Board, pursuant to the Absolute Charter. The number of directors may be amended only by vote of 2/3 of the Board of Directors at a duly held annual or special meeting. All other actions require the affirmative vote of nine (9) directors. Under amendments to the Bylaws, effective May 1, 1998, the Board is comprised of seventeen directors as follows:

- a. The Chancellor of CUNY, who serves as the Chairperson;
- b. The President of the Graduate School and the University Center of CUNY, who serves as Vice Chairperson;
- c. Two Members who are appointed by the Chancellor of CUNY for a term of two years with a renewal term of two years;
- d. Four At-Large Members (who are not employed by or under contract with CUNY or the Research Foundation) nominated by the Nominating Committee and elected by the Board to serve no more than two consecutive terms;
- e. Two senior college presidents selected by the Council of Presidents of CUNY who serve for a term of two years and no more than two consecutive terms;

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- f. Two community college presidents selected by the Council of Community College Presidents of CUNY who serve for a term of two years and no more than two consecutive terms;
 - g. One full-time CUNY graduate student enrolled in a CUNY doctoral program and holding a University appointment as a graduate assistant or equivalent title selected by the Doctoral Student Council of CUNY for a two-year term; and
 - h. Three tenured CUNY faculty members selected by the Faculty Advisory Council ("FAC") of CUNY, and the Chair of the FAC, who serve two-year terms. At least one tenured faculty member must come from a community college and one from a senior college.

The Nominating Committee that presents the four at-large members to the Board for election is comprised of four members of the Board, two CUNY college presidents, one CUNY faculty member, and one at-large member. Therefore, CUNY officers and faculty control the election of the four at-large members. At a minimum eleven members of the RF Board of Directors hold their positions on the Board by virtue of their positions with CUNY, and four of the remaining six members of the Board are nominated by a nominating committee whose majority is comprised of CUNY officers and faculty. The remaining two members are appointed by the Chancellor of CUNY. The President of the RF is appointed by the Board of Directors and serves at the pleasure of the Board.

The RF receives no direct tax-levy support from either the State or City of New York or from any other appropriating authority or political subdivision thereof. The RF has applied for and received exemption from federal taxation as a Section 501(c)(3) exempt organization under Internal Revenue Code Section 501(c)(3). It files annual information returns on Form 990. The RF has applied for and received exemption from New York State and local sales and use taxes as an exempt organization. At present the RF administers over \$180 million per year in funding from federal, state, and local governmental agencies as well as from private sources. The legal and fiscal separation from the University prevents the co-mingling of tax levy and sponsored funds in accordance with Federal laws governing public institutions of higher learning.

The RF charges an administrative fee for its services against the Indirect Cost Recoveries account established for each college. At present, that fee is 7.25% of the total sponsored program activity (both direct and indirect) for each campus. This fee finances basic operations costs and revenues and a Central Allocations Budget in support of specific University-wide activities, such as: a graduate fellowship fund; a Collaborative Research Award program for CUNY faculty; the budget for the University Faculty Senate; a "start-up" fund to purchase research equipment for newly hired faculty; matching funds for university grants; and a patent budget and other support funds. The Board of Directors approves both the administrative fee and the Central Allocations Budget.

The 1983 Agreement requires the RF to prepare a Financial Plan each fiscal year detailing an estimate of the funds to be received by CUNY or its constituent colleges from grant and contract sponsors and any income derived from such grants and contracts. The Financial Plan is subject to the approval of the University and to the further approval of the State Director of the Budget. The Financial Plan is filed by CUNY with the Chairman of the New York State Senate Finance Committee and the New York State Assembly Ways and Means Committee. RF is further required to submit quarterly financial reports to the Board of Trustees of CUNY. These reports are transmitted to the New York State Director of the Budget and the New York State Comptroller.

The 1983 Agreement further provides that RF must obtain an annual audit of its operations from an independent certified public accounting firm. The audit report must be transmitted to CUNY with two extra copies to be delivered to the State Comptroller and the State Director of the Budget. RF's financial condition and operations are subject to periodic post-audit reviews by the State Comptroller. The Board of Trustees of CUNY has the authority to request funding for RF through the New York State Executive Budget process, which requires the approval of the Governor of the State of New York. The 1983 Agreement also provides that the Foundation shall maintain a policy of public liability insurance with minimum limits of \$500,000/\$1,000,000 for bodily injury and \$50,000 for property damage, designating the Foundation and the University as named insured, covering the activities of the Foundation under this Agreement including, without limitation, any such liability arising out of the conduct of sponsored programs administered by the Foundation at University facilities pursuant to this agreement.

The Employer and the Petitioner, contrary to the Intervenor, contend that the Board has jurisdiction over the Employer. They contend that the RF meets neither of the requirements of Section 2(2) of the Act which exempts any "State or political subdivision thereof" from the Board's jurisdiction. The Supreme Court has approved the Board's test for political subdivisions as entities which are either:

1. Created directly by the state so as to constitute departments or administrative arms of the government, or
 2. Administered by individuals who are responsible to public officials or to the general electorate.
- NLRB v Natural Gas Utility District of Hawkins County, Tennessee,
402 U.S. 600, 604 (1971).

The Intervenor contends that CUNY and the State of New York exercise control over RF's budgetary and financial operation as a fiscal agent for CUNY based upon the control the Board of Trustees of CUNY and the New York Director of

the Budget and State Comptroller have pursuant to the 1983 Agreement. The Intervenor contends that Jervis Public Library Association, Inc., 262 NLRB 1386 (1982), which held that the degree of state and local control over the budget of an entity is indicative of that entity's status as a political subdivision, shows that RF meets the Board's "responsible to public officials" criterion for determining that an entity is a political subdivision. The Intervenor further contends that the extensive financial and budgetary control exercised by CUNY and the State demonstrate that RF is a political subdivision because RF is administered by individuals who are responsible to public officials. Rosenberg Library Association, 269 NLRB 1173 (1984). The Intervenor further maintains that the management and control of RF by CUNY is shown through the appointment and control of RF's Board of Directors. The Chancellor of CUNY is the Chairperson of the RF Board of Directors. The President of the Graduate School and University Center of CUNY is the Vice-Chairperson of the RF Board. Eleven other RF Board members hold their Board appointments based upon their status as CUNY officers, staff and faculty. The remaining four "at large" members are nominated for election to the Board by a Nominating Committee, which consists of four Board members, three of whom are CUNY officers and faculty.

The Intervenor, contrary to the Petitioner and the Employer, contends that CUNY and RF comprise a single employer for purposes of jurisdiction under the Act. This is based upon its belief that the Employer meets the criterion set out by the Board in determining whether two or more businesses are sufficiently integrated so that they may fairly be treated, for jurisdictional and other purposes, as a single enterprise:

"(t)he Board looks to four principal factors: (1) common management; (2) centralized control of labor relations; (3) interrelation of operations; and (4) common ownership or financial control.... The Board has determined that no single criterion is controlling, although it considers the first three, which evidence operational integration, more critical than the fourth, common ownership....Of the above-mentioned first three criteria relating to operational integration, particular emphasis has been placed on centralized control of labor relations. Citations omitted Geo.V. Hamilton, Inc., 289 NLRB 1335, at 1337(1988)."

The Board has maintained its four criteria test and the principle that "single employer status is characterized by the absence of an arm's length relationship found among unintegrated companies." Citations omitted RBE Electronics of S.D., 320 NLRB 80 (1995). The Intervenor contends that when the plethora of evidence indicating the interaction and relationship between CUNY and RF is considered there is nothing resembling an arm's length relationship between unintegrated entities.

The Petitioner and the Employer disagree, but the facts demonstrate that if the RF is not an administrative arm of the State on its own, it is by its intertwined relationship with CUNY. The RF Certificate of Incorporation provides that “[u]pon dissolution of the corporation, surplus assets, if any, shall pass to the Board of Higher Education of the City of New York for the purposes of The City University of New York”. The by-laws of RF provide that : “[i]n the case of dissolution of the Foundation, the assets and property remaining after payments of its just debts and obligations shall be transferred to the City University of New York.”

The equipment and supplies purchased by RF and used in the research and other activities required under grants and contracts awarded to CUNY faculty and staff are not included in RF’s assets. Equipment and supplies obtained by RF utilizing grant and contract funds are transferred to CUNY for use in performance of the grants and contracts and, except in those circumstances in which the grant or contract requires the return of the equipment or supplies to the grantor, are retained by CUNY at the end of the project. The Project Director’s Guide , a manual prepared by RF, issued to Project Directors, who in most cases are CUNY professors or staff, provides that RF: “ will obtain title to equipment from the sponsor, where possible, and will transfer title to your college upon project termination.”

The 1983 Agreement between CUNY and RF provides the duties of RF to include the “employment of personnel necessary for the conduct of the programs, who shall be deemed to be employees of the Foundation and not the University...” Notwithstanding this clear admonition the lines of demarcation between CUNY employees and RF employees is often unclear and confusing. CUNY faculty working as Project Directors/Principal Investigators on sponsored programs can remain CUNY employees and continue to receive their pay and benefits. They are paid by RF during periods when they are not required to be released from their duties as CUNY faculty(e.g. during the summer if the CUNY faculty member does not have teaching duties). RF reimburses CUNY for the time spent by CUNY faculty in the performance of the sponsored program (i.e., “release time”). Release time CUNY faculty are required to comply with RF and CUNY policies and procedures governing sponsored programs.

The testimony of CUNY employee John Davis illustrates this situation. Davis is a Professor of Biology and Medical Laboratory Technology at Bronx Community College. He is also a Board Member of RF as well as the Chair of his department and the Chair of the CUNY Faculty Advisory Council. He directs three grant programs throughout the year. From September to June, the school year, he is paid by CUNY. In July and August RF pays Davis. His job does not change, but who issues his paycheck does. He testified that in the three programs he directs he, not RF, hires people to staff these programs and sets their level of pay. The Project Director’s Guide provides that the Director is “the most important person connected with your project. The conduct of the

sponsored program will be within your exclusive power. You will make the professional and technical decisions as to personnel and the selection of particular items of equipment and supplies to be purchased....” The Guide further corroborates Davis’ testimony in that it states the “responsibilities for hiring lies with the individual college and the project director at that campus.”

A good example of the cross-pollination of jobs between CUNY and RF is the Begin Employment Gain Independence Now Language Program (BEGIN). This is one of the programs involved in this case. It is a Cooperative Agreement between the Department of Social Services of the New York City Human Resources Administration (HRA) and the CUNY Office of Academic Affairs. John Mogulescu, University Dean of Academic Affairs, has University wide oversight for this program and is the Principal Investigator for the program. Mogulescu reports to the CUNY Vice Chancellor for Academic Affairs, who is one of three Vice Chancellors for the University. Mogulescu’s salary is paid by RF. His offices are located at the administrative offices of CUNY. The intermixing of CUNY and RF employees extends to Dean Mogulescu’s staff. Of the four persons on his staff at CUNY administrative offices , two are paid by CUNY and two are paid by RF.

At Bronx Community College (BCC) the BEGIN program is overseen by Vice President George Sanchez, who was formerly Dean of Continuing Education at BCC. He is a CUNY employee with the title of Vice President BCC Office of Institutional Development, Restructuring and Promotion. The President of BCC and the Board of Trustees of CUNY appointed him to this position. He along with the Acting Associate Dean of Institutional Development for BCC, who reports to him, are CUNY employees and paid by CUNY. They have direct oversight responsibilities for the sponsored grants and contracts operating on the BCC campus which total between \$15-\$17 million annually. Sanchez is the supervisor of several Project Directors at BCC. He and his Acting Associate Dean communicate with RF regarding project director complaints about poor service, especially with regard to timely payroll actions.

The Project Director of the BEGIN Program at BCC is Blanche Kellawon. She is also the Project Director of the Adult Education Act Program, the GED Program and the Displaced Home Maker Program at BCC. Her direct supervisor at BCC is Vice President Sanchez. He approves her time and vacation leave as well as her reappointment, i.e., her rehiring at the commencement of each new grant. Kellawon submits to Sanchez copies of her correspondence regarding a variety of personnel matters and consults with him on issues relating to the administration of the programs for which she is responsible. Kellawon also reports to Dean Mogulescu, the Principal Investigator for the entire BEGIN Program at CUNY. She attends regular meetings for BEGIN Program Directors with Dean Mogulescu and his staff.

The employees who work at BCC in the Begin Program have and wear CUNY faculty identification cards. The identification cards have no reference to RF on them. The BEGIN employees have access to and use BCC facilities such as the library, computer facilities, faculty lounge, and cafeterias. They also have access to the BCC parking lot. The letterhead and promotional brochures for the BEGIN Program and other programs at BCC do not mention RF and only mention BCC.

The record herein further reflects the intermixing of CUNY and RF employees on the staff of CUNY Vice Chancellor Emma Espino Macari. She holds joint titles of Vice Chancellor for Facilities, Planning, Construction and Management and Executive Director of City University Construction Fund (CUCF). Macari has two offices ; one in the CUNY Administrative offices located at 535 East 80th Street and one rented by CUNY in CUCF offices at 555 West 57th Street. She reports to the Chancellor in her role as Vice Chancellor and to the Board of Trustees of CUCF as Executive Director. Her duties as Vice Chancellor include overseeing the planning and implementation of CUNY's facilities building program. Her entire salary is paid by CUNY. In her duties at CUCF she oversees activities and projects implemented through bond proceeds and reports to the Board of Trustees on their implementation. She has three Directors that report to her: Robert Zimring, Director of Space Planning and Capital Budget, a RF employee; Leah Gardner, Director of Design Construction and Management, a CUNY employee; and Russell Nobles, Deputy Executive Director and General Counsel, a RF employee. Macari hired all three of these directors. Of the ten employees that report to Zimring RF pays eight and two are paid by CUNY. Of the 30 employees that report to Gardner 28 are paid by CUNY and two are paid by RF. RF pays all three of the employees reporting to Nobles. Macari has two secretaries. One is paid by CUNY, and the other one is paid by RF. RF pays Macari's executive assistant.

The policies of RF and CUNY are the same in many areas. Policies concerning patents, copyrights, human subjects, and laboratory animals are joint policies with the University. RF makes a conscious effort to keep variations from University policy at a minimum. Another example of this is the Affirmative Action Policy of RF, which states: "Each unit of the University has its own Affirmative Action Officer and its own Affirmative Action plan. Those employees of the Foundation based on a campus or the central office of the University will be recruited and selected according to the Affirmative Action plan of that unit. The Campus College's Affirmative Action Officer is the proper source for information on policies and procedures regarding recruitment. The Grievance Policy for Project employees also requires the presence and input of a designated college representative at each step of a grievance procedure brought by a person engaged under a project grant of contract." The RF requires that Project Directors obtain the approval of the campus Affirmative Action Officer for Personnel Vacancy Notices.

Thus, based upon the above, I find that RF and CUNY constitute a single integrated employer and thus meet the first prong of the test in Hawkins County by virtue of CUNY being in an administrative arm of the State.

The RF also meets the second prong of the test in Hawkins County, based on the record herein which indicates that RF is being administered by individuals who are responsible to public officials. RF was created to facilitate CUNY's pursuit of research grants and contracts. CUNY officials concluded that, if CUNY was to compete favorably with other universities and research institutions, it needed an "efficient internal mechanism for handling projects. The Research Foundation was created for this purpose." It exists as a vehicle for CUNY and the City and State of New York to avoid commingling of grant and contract funds with public tax revenues. The State of New York and CUNY exercise direct control over the fiscal operations of RF. All monies received by RF are received as a direct result of the efforts of CUNY personnel, faculty and staff and are earmarked for use by CUNY, its personnel, faculty and staff, and are spent accordingly.

Under the 1983 Agreement, which was subject to the approval of State Office of the Budget and State Comptroller, RF was designated to undertake post-award administration of all grants and contracts generated by all CUNY colleges, programs, faculty and staff. The 1983 Agreement further requires RF to prepare a Financial Plan for each fiscal year setting forth an estimate of the funds to be received by CUNY and/or its constituent colleges from grant and contract sponsors and any other income derived from such grants and contracts. The Financial Plan is "subject to the approval of the University, and to the further approval of the State Director of the Budget." Additionally, the Financial Plan is filed by CUNY with the Chairman of the New York State Senate Finance Committee and the New York State Assembly Ways and Means Committee. RF must obtain an annual audit of its operations from an independent certified public accounting firm. The audit report must be transmitted to CUNY and, via CUNY, to the State Comptroller and the State Director of the Budget. RF's financial condition and operations are also subject to periodic post-audit reviews by the State Comptroller.

With the extensive financial and budgetary control which CUNY and various public officials of the State of New York exercise over RF's financial operations, RF meets the Board's "responsible to public officials" criterion for determining that an entity is a political subdivision as set forth in Jervis Public Library Association, Inc., 262 NLRB 1386 (1982). The Board has held that the degree of state and local control over the budget of an entity is indicative of that entity's status as a political subdivision. In Jervis the Board held that: "the record establishes that the city of Rome and the State of New York exercise significant control over the Employer's expenditures by reason of the required submissions of an annual budget to each prior to funding approval.... Considering the degree

of governmental operating and budgeting control, and the longstanding history of this employer as a state-authorized educational facility, we conclude that the Employer is an agent of the State of New York because it constitutes, in the words of the Supreme Court in *Hawkins*, an “administrative arm” of the State in providing educational services to the public.” *Jervis*, 262 NLRB at 1388. The Board in a similar case relied upon *Jervis*, and found that the Employer was an exempt political subdivision because individuals who were responsible to political officials administered it. *Rosenberg Library Assn.*, 269 NLRB 1173 (1984).

There is no evidence that the Board has ever certified a unit involving the Employer herein. The arguments put forth by both the Petitioner and the Employer that since the Board has exerted jurisdiction over The Research Foundation of the State University of New York (RFSUNY) and, that since employees have filed unfair labor practice charges against RF, jurisdiction should be asserted herein, are not persuasive. There was no evidence that the public employer or governmental status of RF was ever placed before the Board. Nor am I persuaded that the fact that the contract the Intervenor has with the Employer, which lacks any provision identifying RF as a public employer, making civil service law applicable, or requiring legislative action to implement its terms, requires a finding that the Board has jurisdiction herein. With regard to RF-SUNY, the RF and Petitioner contend that RF-SUNY ‘s establishment and relationship with SUNY is substantially similar if not identical to the relationship between RF and CUNY. RF and Petitioner then point to instances where charges and petitions involving RF-SUNY have been brought before the Board. In 1976, Region 3 issued complaint in Case 3-CA-6602 alleging violations of 8(a)(1) and (5) of the Act. The Charge was filed by Syracuse Neighborhood Health Center Professional Employees’ Association and involved a recognized unit of all professional employees employed by RF-SUNY at the Health Center located in Syracuse, New York. The parties stipulated that there was no decision by an administrative judge on the complaint. I take administrative notice that on November 23, 1976, Region 3 issued an Order Approving the Withdrawal of the Charge and Dismissing the Complaint and Notice of Hearing.

In 1979, a petition was filed in Case 3-RC-7511 by Service Employees’ International Union, Local 200, AFL-CIO involving a unit of all health counselors, secretaries and clerical employees employed by RF-SUNY at another Syracuse, New York location. A Certification of Representative in that case issued on August 23, 1979. Initially, it is noted that the units involved in the aforementioned cases are substantially different than the unit sought in the instant case. Moreover, there is no indication that the aforementioned units were located on any SUNY campus. Finally, the fact that petitions and charges were filed in certain RF-SUNY situations does not address the particularities of the relationship between RF-SUNY and SUNY with regard to control of the employees and programs in question.

RF and Petitioner also point to the fact that a charge and a petition involving RF-CUNY have been filed with the Board. Thus, in Case 2-RC-16261, the Intervenor sought representation of a unit of employees employed at RF's Central office. That petition was withdrawn on September 12, 1973 and the Intervenor was subsequently recognized pursuant to the results of an election conducted by the Honest Ballot Association. On June 29, 1993, a dismissal letter issued in Case 2-CA-17342, filed against RF, on the basis of there being insufficient evidence of any violation of the Act. The record does not otherwise indicate the allegations contained in the charge or the classification of the employee or employees involved. Finally, RF references in its brief, Case 2-CA-32189, an 8(a)(1) and (3) charge filed against RF on May 13, 1999, by Robert Dickey alleging that RF had failed to renew the contracts of employees providing services to the Hospital League Local 1199 Training and Upgrading Fund because of their protected concerted activities on behalf of the Preparatory Teachers Collective. I take administrative notice that no decision has been made with regard to said charge and that it is being held in abeyance pending this decision. Similarly to the cases filed in Region 3, I find that the prior filing of a petition and two charges involving RF are not dispositive of the jurisdictional issue. First, with regard to Case 2-CA-32189, it is apparently being held in abeyance pending the resolution of the instant proceeding. Second, with regard to Case 2-CA-17432, the dismissal of the charge based on insufficient evidence does not establish that the jurisdictional issues raised, herein, were considered. Finally, with regard to Case 2-RC-17621, the petition was subsequently withdrawn. Thus again, there is no evidence that there was a specific ruling with regard to the jurisdictional issues raised, herein.

There is no doubt that CUNY is exempt from Board jurisdiction and the parties so stipulated that CUNY has been declared a public employer by action of the New York State Legislature and is not an employer within the meaning of Sec. 2 (2) of the Act. Both the Petitioner and the Employer cite cases such as Enrichment Services Program, Inc., 325 NLRB 818 (1998) for the proposition that the Board does have jurisdiction over the Employer. In that case the Board held that for an entity to be deemed "administered by" individuals responsible to public officials or to the general electorate, those individuals must constitute a majority of the board. There only one third of the board was found to be responsible to public officials. In the case at bar CUNY dominates the board membership as well as all officers of the board. The by-laws of the corporation control the membership of the board and require that those CUNY officers, faculty and staff dominate the board which runs RF. With the composition of the board controlled by CUNY, the control of the financial budget and operations by the State and CUNY, as well as the intermingling of jobs between CUNY and RF I conclude that RF is exempt from jurisdiction by virtue of being a political sub-division based upon Section 2(2) of the Act.

⁷ Assuming, arguendo, that the Board would assert jurisdiction herein, I shall resolve the appropriate unit issue. The Petitioner is seeking a bargaining unit composed of Adult Basic Education (ABE), Be Employed Gain Independence Now (BEGIN), and General Equivalency Degree (GED) program employees supervised by Blanche Kellawon at the Bronx Community College (BCC) campus of CUNY. These programs provide educational services, training, counseling, and other services, free of charge, to welfare recipients, and underprivileged adults in the community. Blanche Kellawon, a RF employee, is the Project Director for the BEGIN, ABE, and GED programs located in Gould Residence Hall on the BCC campus.

The Employer contends that the unit sought by the Petitioner is inappropriate and that a unit of all RF employees in a multi-location unit of BEGIN, ABE, and GED programs would be an appropriate unit. Moreover, at a minimum the Employer contends that the smallest appropriate unit would be a unit of all RF employees at BCC. The BEGIN program provides English language classes to adults at BCC, Borough of Manhattan Community College (BMCC), and Brooklyn College. The BEGIN program is funded annually by the New York City Human Resources Administration (HRA) pursuant to a Memorandum of Understanding (MOA) between CUNY and HRA. John Mogulescu, University Dean of Academic Affairs, as stated earlier herein, is the Principal Investigator of the program. He has oversight at the three locations where it is being taught.

The ABE programs provide basic reading, writing, and math from 3rd grade level up to 8th grade level as well as English as a second language (ESL) training at thirteen CUNY campuses in addition to BCC. The GED programs provide instruction so that persons who did not graduate from high school may take and pass the general equivalency test for a high school diploma. RF manages GED programs on at least twelve CUNY campuses.

The RF manages more than 100 sponsored programs that are located at BCC and has more than 330 full and part-time employees who work in these programs. Blanche Kellawon, the Project Director for the three programs sought in the petition, refers to these three programs as the Literacy Program at BCC. Kellawon oversees these three programs as if they are one as evidenced by her statement of expectations issued to all ABE/GED/BEGIN Language Program staff members at BCC.

Kellawon recently became the project director for the Displaced Homemakers program at BCC that has eight employees, which the Petitioner does not seek to represent. The record does not reflect the job titles of these employees, but it does reflect that its two counselors do appear as guest speakers for the Literacy Program at BCC. The Displaced Homemakers program is funded by the Department of Labor to provide services to displaced homemakers, including training, job readiness and assistance with finding a job. The offices for

Displaced Homemakers program are on the third floor of Gould Residence Hall at BCC.

A portion of Kellawon's salary is paid from each grant (BEGIN and ABE [ALE and AEA]). This is a decision made by Kellawon. She also makes the decision on how to pay her two assistant directors: Eric Rosenbaum and Osmara Lopez. Rosenbaum is paid from BEGIN and Lopez is paid from ABE, GED, and BEGIN. Both of these individuals work on all aspects of the Literacy Program at BCC. They are the only two supervisors that are in the Literacy Program under Kellawon. They both are involved in hiring, discipline and directing the work of the employees in the Literacy Program. Rosenbaum and Lopez conduct formal evaluations of the BEGIN/ABE/GED staff.

There is interchange and collaboration among the RF employees and Project Directors serving the sponsored programs at BCC. A counselor employed by RF at BCC providing counseling services in GED and BEGIN programs also provides counseling in the Access program in which Jean Napper, a RF employee, is the Project Director. Another full-time RF employee providing instructional services in another program also teaches part-time in the BEGIN program at BCC. Two counselors in the Displaced Homemakers program provide counseling workshops and job preparation training in the BEGIN program. An assistant job developer for the BEGIN program also works part-time in a program for which Jean Napper is Project Director. Kellawon testified that she and Jean Napper would fill in for each other when one is out for illness or vacation. There is interaction between the RF administered programs in Gould Residence Hall of BCC in planning staff development, activities, supervising of staff in absence of directors, consulting about space usage, interviewing staff, project proposals, putting together budgets, and purchasing equipment. The programs in Gould Residence Hall such as BEGIN, Literacy, Displaced Homemakers Project Hire, Access, and Upward Bound share classrooms and office space. They also pool money for computers, share labs and computers, TVs, VCRs, testing materials, and office supplies.

These programs are all outreach programs to disadvantaged adults as opposed to programs at BCC that are for college credit that can lead to a college degree. There is currently no one on the outreach program staff that is also teaching college credit courses at BCC. There is a void of evidence showing interchange or collaboration between the outreach programs at BCC and the core academic programs administered by RF at BCC.

The skills, functions and working conditions of the employees supervised by Kellawon are essentially the same as the skills, functions and working conditions of other outreach program employees at BCC in providing educational, job training and counseling programs for welfare recipients and underprivileged communities at BCC. The outreach program employees supervised by Kellawon

have daily contact with other RF outreach program employees at BCC who also work in Gould Residence Hall and Guggenheim where sponsored programs are performed.

The Board has held for a long time that a single unit is presumptively appropriate over a multi-location unit. D & L Transportation, Inc., 324 NLRB 160 (1997). This presumption, however, can be rebutted. In determining whether the single site has been rebutted in a given case the Board looks to the following factors: the degree to which the Employer has centralized control of over operations and labor relations, the extent of local autonomy, similarity of product or skills or type of work required, distance between operations, conditions at various locations and extent, if any, of employee interchange among sites. J&L Plate, 310 NLRB 429 (1993). The evidence herein supports the finding of a community of interest in the outreach programs administered by RF at BCC as opposed to all RF administered programs at BCC or all RF programs on all CUNY campuses. The strength of this finding is based on the facts that the similarity of compensation, hours of work, benefits, supervision, qualifications, training, skill, job functions, work situs, contact with other employees, integration of work functions, interchange with other employees is strongest in the group of all RF employees in the outreach programs at BCC. The benefits and hours of work are comparable in all RF employees at BCC. However, in the remaining community of interest criteria the similarities are found only in the employees employed in the outreach program at BCC. There is no record evidence of any interchange between the employees in the sponsored outreach programs with employees in the sponsored core academic mission programs. Most of the core academic programs involve CUNY employees and staff that have release time paid to CUNY for time that are involved in RF administered programs. There is no release time paid to employees in the outreach programs unit found appropriate. Nor is there any record evidence of similar qualifications, training, and skill or job functions with the core academic programs at BCC.

In light of the separate community of interest and the absence of a labor organization seeking a broader unit, and the Petitioner's willingness to go to an election in the unit found appropriate herein, I find that the smallest appropriate unit is the unit of all RF employees in the outreach programs at BCC. See Executive Resources Associates, 301 NLRB 400 (1991).

Should the Board find jurisdiction in this matter, a direction of election would be contingent upon the Petitioner supplying an adequate showing of interest within 48 hours of receipt of the Board's decision in the unit found appropriate therein.

The original unit sought by the Petitioner with regard to the employees in ABE, BEGIN, and GED program employees at BCC was approximately 40 employees. The record does not reflect the number of employees in the unit of all outreach program employees of RF at BCC.

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